

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

805T0545

HOUSE JUDICIARY ENGROSSED NO. **HB 1273** 2/13/2012

Introduced by: Representatives Haggar, Abdallah, Conzet, Gosch, Hansen (Jon), Magstadt, Turbiville, and Wick and Senators Holien, Brown, Novstrup (Al), and Rave

1 FOR AN ACT ENTITLED, An Act to prohibit the sale of loose leaf incense to minors, to
2 prohibit certain marketing techniques, to regulate the sale of certain types of incense, to
3 provide penalties therefor, and to declare an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. For purposes of this Act, a retailer is any person who sells merchandise at retail.

6 Section 2. No retailer may sell, in a single transaction, one quarter of a gram or more of
7 loose leaf incense. Any person who sells loose leaf incense in violation of this section is guilty
8 of a Class 1 misdemeanor.

9 Section 3. No retailer may willfully and knowingly supply, deliver, give possession, or sell
10 any amount of loose leaf incense to a person under twenty-one years of age. A violation of this
11 is a Class 1 misdemeanor.

12 Section 4. Any retailer who offers loose leaf incense for sale shall display and offer the
13 product for sale behind the counter or in a locked case so that a customer wanting access to the
14 product must ask a store employee for assistance. A violation of this section is a Class 1



1 misdemeanor.

2 Section 5. If offering for sale loose leaf incense, a retailer shall, before making such a sale,
3 require and make a record of the identification of the person purchasing the product. For
4 purposes of this Act, the term, identification, means a document issued by a governmental
5 agency which contains a description of the person or a photograph of the person, or both, and
6 gives the person's date of birth, such as a driver license, passport, or military identification card.
7 The retailer shall maintain the record of identification, including the purchaser's name and date
8 of birth. On August 1, 2012, and no later than the fifth day of every month thereafter, the retailer
9 shall send any such records to the Office of the Attorney General. No retailer may use or
10 maintain the record for any private or commercial purpose or disclose the record to any person,
11 except as authorized by law. The retailer shall disclose the record, upon request, to a law
12 enforcement agency for a law enforcement purpose.

13 Section 6. No manufacturer, distributor, or retailer may advertise to the public, directly or
14 indirectly, that loose leaf incense can be ingested. A violation of this section is a Class 1
15 misdemeanor.

16 Section 7. A retailer shall label each package of loose leaf incense sold in this state with a
17 warning label that reads as follows: "This product is not meant to be ingested. The side effects
18 of ingesting this product are unknown." A violation of this section is a Class 1 misdemeanor.

19 Section 8. For purposes of this Act, loose leaf incense includes loose potpourri, loose herbal
20 incense, herbal smoking blends, or similar dried, leafy substances sold or marketed, directly or
21 indirectly, as a relaxation, smoking, or herbal enhancement product. Herbal dietary supplements
22 or remedies and United States Food and Drug Administration approved herbal teas or products
23 are not included as loose leaf incense under this Act.

24 Section 9. A retailer shall ensure that each package of loose leaf incense sold is labeled with

1 each ingredient present in the product, including all chemicals and additives.

2 Section 10. Whereas, this Act is necessary for the immediate preservation of the public
3 peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full
4 force and effect from and after its passage and approval.